

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Industrial Waste Cleanup
Detroit, Michigan**

Respondent.

)
) **Docket No. CAA-5-99-019**
)
) **Proceeding to Assess**
) **Administrative Penalties**
) **under Section 113(d) of the**
) **Clean Air Act,**
) **42 U.S.C. § 7413(d)**

**PARTIAL
CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the Director, Air and Radiation Division, Region 5, United States Environmental Protection Agency (U.S. EPA), having filed the Amended Complaint for this civil administrative action against Industrial Waste Cleanup, Inc. Detroit, Michigan (Respondent); and;

The parties having agreed that the resolution of this action is in the public interest and that the entry of this Consent Agreement and Final Order (CAFO) without further litigation is the most appropriate means of resolving this action;

NOW, THEREFORE, based upon the pleadings, before the taking of any testimony, without the adjudication of any issue of fact or law, and upon the consent and agreement of the parties, it is hereby Ordered as follows:

I. PRELIMINARY STATEMENT

1. On July 12, 1999, Complainant initiated this action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d)(1), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (the Consolidated Rules of Practice), Final Rule, 64 Fed. Reg. 40138, codified at 40 C.F.R. §§ 22.1(a)(2) and 22.13.

2. The original Complaint named two respondents, St. Lawrence and Industrial Waste Cleanup, Inc. (IWC).

3. Subsequently, U.S. EPA settled the case against St. Lawrence via a CAFO that was filed on February 25, 2000.

4. Following the settlement with St. Lawrence, the Court granted leave to the United States to file an Amended Complaint against IWC. The Amended Complaint, which was filed on March 31, 2000, dropped St. Lawrence as a respondent and dropped Count 1 of the original Complaint.

5. This Consent Agreement and Final Order (CAFO) applies only to IWC and therefore, is a partial settlement of case CAA-5-99-019, although it is a complete settlement with regard to all allegations against IWC, and the final settlement in this case.

6. The Amended Complaint alleges that IWC violated Section 112(b) of the Act, 42 U.S.C. § 7412(b), and the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, Subpart M (1991), in connection with the renovation at 44633 Utica Road, Utica, Michigan (Asbestos NESHAP). Specifically, the Complaint alleges that IWC: 1) failed to

adequately wet the regulated asbestos containing material (RACM) and ensure that it remained wet until collected and contained or treated in preparation for disposal in violation of 40 CFR § 61.145(c)(6); and 2) failed to seal all asbestos containing waste material in leak-tight containers in violation of 40 CFR 61.150(a)(iii).

7. IWC filed its Answer on August 6, 1999, which also served as an Answer to the Amended Complaint, and requested a settlement conference pursuant to Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), and Section 22.15 of the Consolidated Rules, 40 CFR § 22.15.

8. IWC denies the allegations contained in Counts 1 and 2 of the Amended Complaint, and denies that it violated the Act. To avoid the uncertainties of litigation, IWC and Complainant have determined that this matter should be settled without a hearing or further proceedings, upon the terms set forth in this CAFO.

9. IWC does admit the jurisdictional allegations set forth in the Amended Complaint.

10. IWC waives its right to a hearing on the allegations of the Amended Complaint. This CAFO shall apply to and be binding upon IWC and its successors and assigns, including, but not limited to, subsequent purchasers.

11. IWC certifies that it is in full compliance with the Asbestos NESHAP.

12. IWC and Complainant consent to the terms of settlement forth below.

II. TERMS OF SETTLEMENT

13. Based on the foregoing stipulations and findings, and having taken into account the costs and uncertainties of litigation, IWC's full compliance history, degree of culpability, economic benefit or savings resulting from the alleged violations, the size of IWC 's organization and the economic impact of the penalty on the organization, IWC's good faith efforts to comply, and

particularly U.S. EPA's financial analysis of IWC's ability to pay, Complainant agrees to mitigate IWC's portion of the \$39,000 penalty to \$6,500.

14. Within thirty (30) days following the effective date of this CAFO, IWC shall pay a civil penalty in the amount of Six Thousand Five Hundred Dollars (\$6,500) for the alleged CAA violations. Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America." IWC shall send the check to:

U.S. EPA - Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check shall reference the name of the case, the name of the establishment, the Docket Number of the CAFO and the billing document number. A copy of the check shall also be sent to each of the following addresses:

Regional Hearing Clerk (E-19J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Section Secretary (AE-17J)
Air Enforcement Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kathleen Kelly Schnieders (C-14J)
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Failure to pay the entire proposed penalty may result in the referral of this matter to the United States Department of Justice for collection.

15. Interest and late charges shall be paid as specified in Paragraph 36 below.

16. Pursuant to 31 U.S.C. § 3717, U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13 (d) and (e).

17. IWC consents to the issuance of this Consent Agreement.

18. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the allegations in the Amended Complaint against IWC. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of IWC. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of IWC to comply with such laws and regulations.

19. Nothing in this CAFO shall relieve IWC of the duty to comply with all applicable provisions of the Clean Air Act and other Federal, State and local laws and statutes.

20. Each undersigned representative of each party to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms of this CAFO and

to bind that party to such terms.

21. This CAFO constitutes the entire agreement between Complainant and IWC.

22. The parties to this agreement consent to the entry of this CAFO without further notice.

23. Each party shall bear its own costs, fees and disbursements in this action.

24. This is a "Final Order" for purposes of the "enforcement response" policy set forth in U.S. EPA's penalty policies.

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Docket No. CAA-5-99-019
Consent Agreement and Final Order.

Industrial Waste Cleanup, Inc.
12838 Gravel Street
Detroit, Michigan 48228

04/05/01
Date

Juan Quroz
Juan Quroz
President

Region 5
U.S. Environmental Protection Agency
Complainant

4/11/01
Date

Cheryl Newton
Cheryl Newton, Acting Director
Air and Radiation Division

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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The respondent is hereby ordered to comply with all of the terms and conditions of the Consent Agreement upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

April 2, 2001
Date

David A. Ullrich
David A. Ullrich
Acting Regional Administrator

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered an original of the Consent Agreement and Final Order (CAFO), docket number CAA-5-99-019 to the Regional Hearing Clerk, Region 5, United State Environmental Protection Agency, and that I mailed an original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Industrial Waste Cleanup, Inc.'s Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Daniel P. King
Pedersen, Keenan, King, Wachsburg &
Andrzejak, P.C.
30201 Orchard Lake Road, Suite 220
Farmington Hills, Michigan 48334-2278

cc's: Timothy McGarry, Chief Enforcement Unit
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

on the 13th day of April 2001.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7019 3400 0000 9581 3363